



NPDES Voluntary Permit Fee Incentive for Clean Water Act Section 106 Grants; Allotment Formula

The NPDES Voluntary Permit Fee Incentive for Clean Water Act Section 106 Grants; Allotment Formula rule provides financial incentives to states to implement adequate fee programs when administering an authorized National Pollutant Discharge Elimination System (NPDES) permit program. The rule defines eligibility for the incentive, identifies the process for determining the amount each eligible state will receive, and establishes procedures and guidelines for eligible states to follow when applying for the incentive. The rule encourages states to implement adequate NPDES fee programs that shift part of the financial burden to those who benefit from NPDES permits. The permit fee incentive will only be made available if state Section 106 funding is greater than the FY 2008 level. Therefore, state grants will not decrease as a result of this rulemaking. The rule will be in effect for the fiscal year 2009 grant process and beyond. For this year only, EPA has extended the deadline for states to certify for permit fee incentive funds to November 14, 2008.

Background

Section 106 of the Clean Water Act (CWA) authorizes EPA to provide grants to state, interstate agencies, and tribes to administer programs for the prevention, reduction, and elimination of water pollution. EPA's current allotment formula for Section 106 grants establishes an allotment ratio for each state based on six components selected to reflect the extent of the water pollution problem in the respective states. These six components are: surface water area, ground water use, water quality impairment, potential point sources, nonpoint sources, and the population of urbanized areas (40 CFR §35.162 (b)(1)(i)). By including a component related to point sources, EPA recognizes the important role they play in determining the extent of pollution in a state.

The CWA generally prohibits the discharge of pollutants from a point source into waters of the United States except as in compliance with specified provisions of the Act. Among these provisions is CWA Section 402, which authorizes EPA and authorized states to issue permits for such discharges under the NPDES program. An NPDES permit includes technology-based effluent limits and any more stringent limits necessary to meet applicable water quality standards. EPA oversees the NPDES program and also approves applications from states to administer and enforce the NPDES program in that state. Currently, 45 states are authorized by EPA to administer all or some parts of the NPDES program.

State water quality programs are funded with a mixture of state and federal dollars. The grants awarded under CWA Section 106 are states' primary source of federal funding. The growing complexity of water quality issues and the growing resource needs associated with addressing these issues have prompted more states to implement NPDES permit fee programs. An estimated 41 states currently have permit fee programs in place, with such fees paying for all or a

portion of the cost of the state's permit program.

A number of states still operate their permit programs with little or no reliance on permit fees. EPA believes that these states can address permit program budget shortfalls through the implementation of permit fee programs that collect funds to cover the cost of issuing and administering permits. The amendment to the allotment formula is designed to provide an incentive to states to move toward greater sustainability in the way they manage and budget for environmental programs and to shift part of the financial burden to those who benefit from NPDES permits.

About This Rulemaking

This rule amends the state allotment formula to incorporate financial incentives for states to utilize an adequate fee program when implementing an authorized NPDES permit program. Funding permit programs with the support of permit fees allows states to target CWA Section 106 funds for other critical water quality program activities. As a result of this change, EPA will allot the state and interstate agencies CWA Section 106 grant funds in the following order:

- 2.6 percent will be set-aside for allotment to the interstates agencies in accordance with the existing Interstate allotment formula at 40 CFR §35.162(c),
- Funds may be allotted under the alternative allotment formula at 40 CFR §35.162 (d),
- EPA may allot funds (if funds exceed 2008 baseline level) to states in accordance with the permit fee incentive allotment formula at 40 CFR §35.162(e),
- The balance of the state Section 106 funds will be allotted in accordance with the existing allotment formula at 40 CFR §35.162(b).

The incentive will never exceed approximately \$5.1 million and will only be made available if state Section 106 funding is greater than the FY 2008 level. The rule is in effect for the fiscal year 2009 grant cycle and beyond.

Only those states that have been authorized by EPA to implement the NPDES program by the first day of the fiscal year, October 1, will be eligible for the set-aside funds. To be eligible for the set-aside funds, these States must also submit annually a certification to EPA (to the attention of the Regional Administrator). For FY 2009, the certification must be postmarked by November, 14, 2008. For every year thereafter, the required certification must be postmarked by October 1. The certification must meet the following two requirements. First, the certification must provide the total NPDES state program costs, the percentage of NPDES program costs recovered by the state through permit fee collections during the most recently completed state fiscal year, and a statement that the amount of permit fees collected is used by the state to defray NPDES program costs. This rule defines NPDES program costs as all activities relating to permitting, enforcement, and compliance. Second, the certification must include a statement that state recurrent expenditures for water quality programs have not decreased from the previous state fiscal year, or indicate that a decrease in such expenditures is attributable to a non-selective reduction of the programs of all executive branch agencies of the state government.

After EPA determines the number of eligible states, each state will be eligible to receive up to a

full share of the set-aside amount. EPA will determine the amount of a full share by dividing the set-aside amount by the number of eligible states. The percent of a full share that each eligible state will receive will be determined by the following formula, based on the certification information described above.

(A) A state will receive 25 percent of a full share if that state has collected permit fees that equal or exceed 75 percent of total state NPDES program costs;

(B) A state will receive 50 percent of a full share if that state has collected permit fees that equal or exceed 90 percent of total NPDES program costs; or,

(C) A state will receive a full share if that state has collected permit fees that equal 100 percent of total NPDES program costs.

How to Get Additional Information

For general information about the Section 106 Water Pollution Control Grant Program or technical inquiries, please contact Ben Hamm at (202) 564-0648 (hamm.ben@epa.gov) or Robyn Delehanty at (202) 564-3880, (delehanty.robyn@epa.gov). Copies of the Notice of Final Rulemaking can be downloaded from EPA's Office of Wastewater Management web site at: www.epa.gov/owm/cwfinance/pollutioncontrol.htm.